

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

|  |   |                              |
|--|---|------------------------------|
| UNITED STATES OF AMERICA, <i>ex rel.</i> | ) |                              |
| JAMES F. ALLEN,                          | ) |                              |
|  | ) |                              |
| Plaintiff,                               | ) | CIVIL ACTION NO. 16-cv-11372 |
|  | ) |                              |
| v.                                       | ) |                              |
|  | ) |                              |
| ALERE HOME MONITORING, INC.;             | ) |                              |
| ADVANCED CARDIO SERVICES;                | ) |                              |
| CARDIOLINK CORP.; and                    | ) |                              |
| TAMBRA INVESTMENTS, INC. d/b/a           | ) |                              |
| REAL TIME DIAGNOSTICS.                   | ) |                              |
|  | ) |                              |
| Defendants.                              | ) |                              |

**DEFENDANT ALERE HOME MONITORING, INC.’S  
OPPOSITION TO RELATOR’S MOTION FOR LEAVE TO FILE REPLY  
MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY**

Defendant Alere Home Monitoring, Inc. opposes Relator’s request to file a reply brief because Relator’s motion is improper and further briefing only compounds the issue. Relator filed his motion without meeting and conferring and now concedes he might *withdraw* it altogether once the parties’ ongoing discussions conclude. Knowing the short discovery period set by the Court, Relator nonetheless chose to squeeze a year’s worth of document discovery into a couple months, requiring AHM to deploy nearly 20 attorneys to review tens of thousands of documents. AHM has already reviewed over 68,000 documents with tens of thousands more to come over the holidays. This should obviate altogether the need for any motion to compel.

Indeed, Relator’s approach to discovery is entirely backwards. Rather than seek to avoid discovery disputes and only bring true disagreements to the Court, Relator filed a shotgun motion injecting the Court into the middle of the parties’ ongoing discussions. And Relator now seeks to exacerbate his error through an *additional* filing addressing issues the parties are still discussing.

In any event, Relator's proposed reply only confirms his motion was terribly premature:

- Relator acknowledges AHM has already produced tens of thousands of pages of documents, documents AHM started reviewing for production long before Relator's improper motion;
- Relator has no objection to AHM completing production early in the new year, contrary to the position taken in his motion;
- Relator has no objection to AHM using search terms to identify responsive ESI, contrary to the position taken in his motion;
- Relator concedes the parties are actively discussing discovery issues in hopes of reaching agreement; and
- Relator acknowledges that he filed his request to file a reply brief the *day before* a further discovery conference with AHM and that he may *withdraw* his motion if the parties reach agreement.

Against this backdrop, AHM respectfully submits the Court should deny Relator's request for leave, allowing the parties to continue to try to narrow or eliminate any disagreements in advance of the January 4 hearing. For example, Relator proposed extensive additions to AHM's search terms last week, and AHM is actively analyzing those terms to assess the burden. Relator's proposed search terms, it turns out, would require AHM to triple the number of attorneys to review over **1.3 million additional documents**, extending AHM's review and production by at least an **additional 6.5 months**. That is why the parties must continue their dialogue to try to reach a compromise. Likewise, while Relator complains about the time period for AHM's collection, he still has not explained why he needs documents from 10 years ago. Notably, these 1.3 million documents discussed above do not even take into consideration Relator's expanded date range. Relator promised to identify specific categories of documents from before 2014, but has yet to do so.

In sum, Relator's motion was premature and counterproductive, and the proposed reply only compounds the problem with additional motion practice while the parties meet and confer.

Dated: December 20, 2018

Respectfully submitted,

/s/ Alexander K. Parachini

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 20, 2018.

/s/ Alexander K. Parachini